





THE SUPREME COURT.

DECISIONS RENDERED TUESDAY  
DECEMBER 1, 1885.

Mr. James Jackson, Chief Justice-Mons. Sam-  
 Hall and M. H. Blandford, Associate Jus-  
 tices-Reported for the Atlanta Con-  
 stitution by J. H. Lampkin.

Gilson vs. Patterson. Non-suit. from Bill  
Bond. Equity. Alimony. Quia timor  
Arrest. Presumptions. Husband and Wife  
Dure's. Principal and Surety. (Before  
Judge Simmons.)  
C. I. and Hall, J. being disquali-

Hammond, J.—1. Where a bond was given reciting that the obligee had filed her libel in divorce and bill *quia timet* against the obligor under which he had been assessed, and the condition was for the payments of such amounts as might be ordered by the court from time to time as alimony and counsel fees to complainant, the mere recital that the arrears were on a bill *quia timet* was not a prima facie evidence that it was illegal, it appearing that it was made by virtue of the order of the chancellor. The presumption in favor

(a.) Where a bill was filed in aid of a libel for divorce, and the principal purpose of it was to secure the wife's alimony, with proper allegations and proof, the chancellor would have authority to order the arrest of the defendant and to require him to give bond and securities for his compliance with any order that might be made.

(b.) The bill being lost, the presumption that its allegations were sufficient to authorize the granting of the order requiring the defendant to give the bond sued on.

2. Temporary alimony is fixed by the judge in his discretion, and upon the passage of the

lowed becomes fixed and absolute until revoked or modified by the judge, and may be enforced by writ of fieri facias or by attachment for contempt; and the failing to apply for the remedy to enforce it during the pendency of the suit cannot operate to deprive the plaintiff of the right to sue for it after the final verdict disallowing permanent alimony.

3. It is difficult to see how a bond given under the order of the chancellor and in compliance therewith as a condition of the principal debtor's release, was under duress, so as to

(a.) The question whether or not the surety on such a bond could avail himself of the defense of duress upon the principal obligor at the time of the execution of the bond, where the duress was known to the surety.

Code §2149: Brandt on Suretyship, 121: 12 Mor-  
ton (La. An. O. S.), 378; 6 Robinson (La. Ad.), 133;  
70 N. C., 459; 6 Robinson La., 60; 26 Barb., 122;  
21 Md., 208; 13 Miss., 91; 2 Bailey (S. C.), 492.  
Caine's Rep. (N. Y.), 9, note; 4 Hunter (N.  
Y.), 166; 15 Johns., 256; 24 Ga., 296; Dudley's  
Rep., 245; 5 Pet., 129; 72 Penn. St., 375; 2 Mass.,  
487.

Hardman & Davis, Gustin & Hall, for plaintiff in error.  
R. W. Patterson; R. F. Lyoa, for defendant.

Physic vs. Shea, and vice versa. Complaint, from Bibb. Practice in Superior Court. Jury and Jurors.—Verdict. Master and Servant. Actions. (Before Judge Simmons.)  
Jackson, C. J.—The old idea of starving

the judge is empowered to furnish refreshments at the expense of the county. It was, therefore, error for the court to state, in effect, after the jury had been out all night without supper or breakfast, that they would not be allowed their meals except at their own expense. This operated as a threat to starve such as had no money into finding a verdict, and resulted in a

(a.) If a foreman or "boss" in a tailor shop went on a spree, neglected his business and carried other employees with him, his employer might have discharged or reprimanded him, and neither would give him the right to recover against such employer.

(b.) If necessary the pleadings may be amended so as to set out fully the issues between the parties. . . .  
Judgment affirmed.  
S. H. Jemison, for plaintiff.  
Guth & Hall, for defendant.

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Falkner vs. Behr. Complaint, from Bibb. Re-equipment. Evidence. Charge of Court.

2. Where the judge charged repeatedly that, to establish a plea of recoupment on the ground of not keeping true accounts, under a suit for wages by a clerk, the evidence

...and explained fully the rule as to the preponderance of evidence in civil cases, thus distinguishing it from the evidence necessary to convict of a crime, there was no error in refusing to charge in the language of a request to the effect that the proof necessary to establish the plea was not such as would be required to convict of a crime; but that it would be sufficient if it were established by the rules of

3. The court also charged, in effect, that if the plea of recoupment was made out, and the amount shown exceeded the proved wages of the plaintiff, the defendant could recover such amount, which is the substance of the other request not given.

4. Every affirmative issue in a case must be proved by positive evidence, and not by nega-

That where a defendant set up negligence in keeping accounts or appropriation of money on the part of the plaintiff, by way of recoupment, if the plaintiff did not have sole control and management, but the defendant or other employees had management and control of the goods, there must be positive proof of the negligence or misappropriation.

to explain his meaning by stating that the burden of establishing the affirmative plea was the same as that resting on the plaintiff while he held the affirmative position in the case, which was to prove his part of the case to the satisfaction of the jury, and further explaining the rule of preponderance of evidence.

5. Where a plea of recoupment charged that he plaintiff was an employe of the defendant, and had not kept true accounts and had misappropriated funds, the general character of the plaintiff was in issue, and he had the right to sustain it.

Hardeman & Davis; L. N. Whittle, for defendant.

Central Railroad vs. Russell. Case, from Bibb, Railroads. Roads and Bridges. Streets and Sidewalks. Presumptions. Municipal Corporations. Verdict. (Before Judge Simmons.)

(a) If the legislature has conferred upon the municipal authorities power to regulate the running of the trains of a railroad over the























